RE PICHI MUTHU

[R.Cr.J. (Sharma J.) March 14, 1970]

[Malacca — Criminal Revision No. 1 of 1970]

Criminal Law and Procedure — Trial — Power of High Court to set aside acquittal, in revision — Criminal Procedure Code, (Cap. 21), s. 322.

In this case the learned magistrate had acquitted the accused on a charge under section 4(b) of the Prevention of Corruption Act, 1961. Acting in revision the High Court set aside the order of acquittal and ordered a retrial.

Held: in appropriate cases the High Court does and should interfere to set aside the orders of acquittal solely with the object to order a retrial.

Case referred to:-

(1) *Chinnaswamy* v. *State of Andhra Pradesh* A.I.R. 1962 S.C. 1788, 1791, 1792.

CRIMINAL REVISION.

Sharma J. (delivering oral judgment): The accused was charged in the court of the president, sessions court, Malacca, under section 4(b) of the Prevention of Corruption Act, 1961 for having offered 35 cents cash to P.C. 12931, Haji Ibrahim bin Haji Hamzah, as an inducement for forbearing to take action against him under the Road Traffic Ordinance, 1958.

The accused was the driver of lorry BS 3661 and had parked it in the middle of the road. The lorry was unattended. A little later the accused appeared and on being questioned by P.W. 1 he offered him 35 cents with the remark "Jangan saman sama saya, Inche. Minum kopi dengan ini wang." The accused was thereupon arrested. The accused in his defence said that he was unloading fish at the time P.W. 1 came up, but no such suggestion was ever made during the cross-examination of either P.W. 1 or P.W. 2. The accused denied making any payment and said in his defence that the money was in fact not paid but had dropped from the book containing his driving licence. Again no such defence was put or suggested to any of the prosecution witnesses while they were under cross-examination. The learned president thought that the explanation given by the accused that the money had slipped out of the book containing the driving licence was reasonable in spite of the fact that not a word of it was suggested to either P.W. 1 or P.W. 2 and he therefore acquitted the accused. P.W. 1 in fact maintained that the accused when asked to produce his identity card and the driving licence did not produce the same to him. P.W. 1's testimony was corroborated by P.W. 2. The accused in his defence said that the cash dropped on the ground from his driving licence as he was in the process of taking it out but added "I asked for the coins back. P.W. 1 asked me whether I was giving something to him." How could the coins get into the hands of P.W. 1?

I had sent for the record in the exercise of my powers under revision. I am of the view that the learned president was wrong in acquitting the accused in these circumstances. I am quite cognizant of the provisions of section 322 of the Straits Settlements Criminal Procedure Code which provides that the High Court acting in revision cannot convert a finding of acquittal into one of conviction. An order of retrial after setting aside an acquittal in revision does not amount to conversion of a finding of acquittal into one of conviction. There can be no doubt about the jurisdiction of the High Court to interfere in revision either on the application of one of the parties or on its own motion. In appropriate cases the High Court does and should interfere to set aside the orders of acquittal solely with the object to order a retrial. (See *Chinnaswamy* v. *State of Andhra Pradesh*(1)). The learned president had misdirected himself in ignoring and overlooking the evidence of P.W. 1 and P.W. 2 and the total lack of any cross-examination of these witnesses touching the defence which was subsequently suggested for the first time only when the defence was called.

I agree that it is only in serious cases that such a power should be exercised by the High Court. The offence in this case was an offence under the Prevention of Corruption Act, a very serious offence which goes to deface the very image of any good administration and is a disgrace to the society which attempts to corrupt its own law enforcement officers. In the circumstances I set aside the order of the learned president and order a retrial.

The accused will appear before the president, sessions court on the 16th March, 1970. He is allowed bail in the sum of $50.

Retrial ordered.

ATTAN BIN ABDUL GANI v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) March 14, 1970]

[Malacca — Criminal Appeal No. 23 of 1969]

Bribery and Corruption — Presumption from payment of gratification — Duty of accused to rebut presumption — Consent of Public Prosecutor — Corroboration — Prevention of Corruption Act, 1961, ss. 4(a) and 14.

Evidence — Corroboration — Law as to, summarised.

This was an appeal against the conviction of the appellant for an offence under section 4(a) of the Prevention of Corruption Act, 1961.

Held, dismissing the appeal: (1) as it was proved in this case that the gratification had been received by the appellant, the presumption under section 14 of the Prevention of Corruption Act, 1961 arose that the gratification was paid or given or received corruptly;

(2) in the circumstances the appellant had not rebutted the presumption and therefore the appeal must be dismissed.

Cases referred to:-

(1) *State of Madras* v. *Vaidyanatha Iyer* A.I.R. 1958 S.C. 61.

(2) *Emden* v. *State of Uttar Pradesh* A.I.R. 1960 S.C. 548.

(3) *R.* v. *Carr-Briant* [1943] K.B. 607.

(4) *Saminathan* v. *Public Prosecutor* [1955] M.L.J. 121.

(5) *Otto George Gfella* v. *The King* A.I.R. 1943 P.C. 211.

(6) *Lyn Hong Yap* v. *Public Prosecutor* [1956] M.L.J. 226.